(1) S.B. CIVIL MISC. APPEAL NO.742/2006
(Rajasthan State Road Transport Corporation Vs. Ram Chandra & anr.)

(2) S.B. CIVIL MISC. APPEAL NO.858/2006
(Rajasthan State Road Transport Corporation Vs. Ram Chandra & anr.)

Date of Order :: 06.09.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.A.S.Rathore for Mr.Sangeet Lodha for the appellants

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Both these appeals, CMA No.742/2005 and CMA No.858/2005 have been preferred against the common award dated 13.05.2005 made by the Motor Accidents Claims Tribunal, Nohar in consolidated Claim Case Nos.106/1998 and 83/1999 and relate to the same accident and involve interconnected facts, hence were heard for admission together; and having heard learned counsel and having perused the relevant record, this Court is satisfied that both the appeals remain bereft of substance and deserve to be dismissed; and hence are taken up for disposal by this common order.

The claim cases aforesaid related to an accident that occurred at about 8.00 p.m. on Nohar-Rawatsar Road near

village Bhagwan on collision of a bus bearing registration No.RJ 14 P 2766 belong to the appellant – Rajasthan State Road Transport Corporation ('the Corporation' hereafter) and a jeep bearing registration No.HR 24 C 4575. The accident resulted in death of several occupants of the jeep and so also in damage to both the vehicles. The claim applications relating to these appeals were filed respectively by the appellant-Corporation (Claim Case No.106/1998) claiming property damage in the sum of Rs.1,06,216/- against the owner and insurer of the jeep; and by the owner of the jeep (Claim Case No.83/1999) against the Corporation and its driver claiming a sum of Rs.1,12,395/- for the property damage suffered by him. Both the claimants alleged the accident to have occurred for the negligence of the driver of the other side.

Consolidating both the claim cases, the Tribunal framed issues relevant for determination of the questions involved therein. Issue No.1 on the comprehensive questions about liability towards accident involved in two cross cases reads thus:-

> "1- आया दिनांक 7.11.97 को शाम के करीब 8 बजे सड़क आम नोहर रावतसर पर भगवान गांव के नजदीक राजस्थान पथ परिवहन निगम की बस संख्या आर जे 14 पी 2766 को अनावेदक नं01 व क्लेम याचिका सं0 83/99 के आवेदक रामचंद्र के

चालक ने अपनी जीप सं0 एच आर 24 सी 4575 को तेजी व लापरवाही से चलाकर ट्रक्कर मारी जिससे उसके काफी क्षति हुई अथवा क्लेम याचिका सं0 83/99 के अनावेक नं0 2 नरेन्द्र सिंह द्वारा निगम बस को लापरवाही से चलाकर दुर्घटना कारित की जिसके कारण जीप को क्षति पहुंची?"

After evidence of the parties, the Tribunal held on issue No.1 that accident occurred for the negligence of the bus driver Narendra Singh and for arriving at such finding largely relied upon another award dated 18.09.2004 made by the same Tribunal in other claim cases relating to the same accident wherein it was specifically held that the accident occurred for the rash and negligent driving of the bus that resulted in death of Sukhi Devi, Mukandas, Bajrangdas, Saraswati Devi, Ashak Ali and Ram Pratap and in injuries to other occupants of the jeep Dayala Ram, Ramchandra and Prem. The Tribunal further observed that the claimant-Corporation had failed to produce any independent witness and the statement of AW-1 Bhura Ram, conductor of the bus was not reliable.

With the finding that the accident occurred for negligence of the bus driver, obviously the claim for compensation made by the Corporation lost its substance and the same was rejected. In relation to the claim for damage caused to the jeep in Claim Case No.83/1999 the Tribunal

referred to the evidence produced by the jeep owner and with reference to the bills of repair Ex.A/7 for Rs.31,130/- and Ex.A/5 for Rs.3,050/- found the claimant entitled for compensation in the sum of Rs.34,180/- and allowed interest at the rate of 6% per annum from the date of filing of claim application.

Learned counsel for the appellant-Corporation has candidly submitted that the appellant-Corporation did prefer appeals against the said other common award dated 18.09.2004 relating to the same accident where the Tribunal awarded varying compensation in respect of death and injury cases against the appellant-Corporation after holding the bus driver responsible for the accident and that the said appeals have also been dismissed by this Court.

On the particulars stated by the learned counsel, record of such appeals being CMA Nos.66/2006, 69/2006, 71/2006, 191/2006 and 192/2006 were requisitioned and examined. It is noticed that the said appeals were preferred against the same award dated 18.09.2004 as referred by the Tribunal as Ex.A/10 in the present claim cases to notice that the finding on negligence of bus driver for the accident in question has already been arrived at against the Corporation. This Court

while dismissing CMA No.66/2006 on 27.01.2006 after examining the contention of learned counsel for the appellant has observed that the evidence of the conductor cannot be believed and the driver of the bus was not produced and having withheld the best witness, the case of the appellant could not be considered.

The finding on negligence of the bus driver and resultant responsibility for the same accident, even if rendered in other claim case, stands final and binding so far the present appellant-Corporation is concerned; and there cannot be contradictory findings in relation to the same accident particularly about the responsibility towards accident.

Once the finding on negligence of the bus driver is final, the claim of compensation by the appellant-Corporation against the jeep owner is rendered fundamentally baseless and is required to be rejected outright. Even otherwise, the Tribunal has referred in these claim cases also the evidence that was produced by the Corporation. Noteworthy it is that the Corporation has chosen to withhold the relevant witness i.e. driver of the bus and an adverse inference is definitely required to be drawn against them. Viewed from any angle, the claim for compensation made by the Corporation has

rightly been rejected and the appeal submitted by the Corporation in relation to Claim Case No.106/1998 being CMA No.742/2006 is required to be rejected.

So far other Claim Case No.83/1999 is concerned, the Tribunal has made award only in the sum of Rs.34,180/- with reference to the bill Ex.A/7 issued by Mechanic NAW-3 Kirsan in the sum of Rs.31,130/- and another bill Ex.A/5 in the sum of Rs.3,050/- issued by other Mechanic NAW-2 Bhanwar Khan and has not countenanced other claims including the claim for loss of income for about 80 days the jeep remained stranded. The compensation awarded by the Tribunal could only be said to be on the lower side and does not call for any reduction.

In this view of the matter, the other appeal submitted by the appellant-Corporation in relating to Claim Case No.83/1999 being CMA No.858/2006 also remains meritless and deserves to be rejected.

The net result of the discussion aforesaid is that both the appeals are required to be, and hence are, rejected.

(DINESH MAHESHWARI), J.

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